

DECISION

original

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-213725

DATE: May 8, 1984

MATTER OF: Eagle Research Group, Inc.

DIGEST:

1. Protest alleging that technical support services to be procured by agency are not germane to agency's responsibilities and is duplicative of efforts undertaken by other government agencies is denied where protester fails to demonstrate that agency has exercised its discretion unreasonably in establishing its minimum needs.
2. Agency decision to sole-source contract to Federal Contract Research Center (FCRC) is justified where record shows that reasonable basis exists for agency determination that only FCRC could meet agency's needs.
3. Where agency decision to sole-source contract to FCRC is justified, private corporation is not an interested party to question qualifications of particular FCRC-awarded contract since private corporation would not be eligible for award.

Eagle Research Group, Inc. (Eagle), protests the sole-source award of contract No. TC-83-34 by the United States Customs Service (Customs) to the Aerospace Corporation (Aerospace) for technical support services to enhance Customs' ability to enforce the provisions of Project Exodus. Project Exodus is intended to halt the unauthorized and illegal flow of high technology data and materials out of the United States. Under this contract, Aerospace is to identify, characterize and prioritize the critical technologies most desired by foreign nations, determine the characteristics which will identify these critical technologies to Customs field officers and organize this information into a technical data base.

Eagle contends that the work being performed by Aerospace is not relevant to Customs' responsibilities and is duplicative of efforts already undertaken by other federal agencies. In addition, Eagle argues that a sole-source award to Aerospace is not justified because Eagle is capable of performing the work.

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We deny the protest in part and dismiss it in part.

Customs indicates that the success of Project Exodus depends to a large extent upon the actual numbers of arrests, convictions and seizures made by Customs and, as a result, identifying and targeting the United States technologies most desired by foreign nations are critical to its efforts. In order to maximize enforcement efforts and establish particular areas of focus, Customs contends that the significant technologies must be identified and prioritized and the identifiable characteristics must be reduced to a form and format usable by Customs personnel. Although Customs recognizes that other federal agencies are involved in work in this area and have some of the technical skills necessary for this project, Customs contends that an integrated group effort would be extremely difficult due to differences in statutory authorization and the problems that would arise from delegating responsibilities between agencies and diluting channels of authority.

The Aerospace Corporation is a nonprofit Federal Contract Research Center (FCRC) sponsored by the Department of the Air Force and established for the specific purpose of providing general systems engineering and technical management support to the United States Government. Customs determined that only an FCRC, and Aerospace in particular, possessed the attributes necessary for performing the required tasks. Due to the scope of review that was required, Customs concluded that it would be extremely difficult to find a private contractor with sufficient technical expertise that would not be financially involved in the industries being examined and whose objectivity would thereby be subject to question. Customs argues that award to a private firm raises conflict of interest concerns which do not exist if an FCRC performs the work. Also, Customs indicates that for security purposes, it does not want United States industry to gain any insight into Customs' methods of export control. Customs contends that award to an FCRC eliminates the possibility that Customs' methods would be disclosed to the private sector.

In addition, Customs argues that Aerospace is uniquely qualified to perform the required work. Customs conducted an evaluation of FCRC contractors capable of providing the desired technical support and determined that Aerospace was the only FCRC that had the broad base of systems engineering and high technology expertise to support Customs' enforcement efforts. Customs indicates that Aerospace

routinely deals with state-of-the-art items across all technological disciplines and is in a unique position to assist Customs in disrupting the flow of strategic technology from the United States.

Eagle argues that an award to an FCRC is inappropriate since FCRC's are prohibited by their charters from competing with the private sector. Eagle contends that it is capable of the type of review required by Customs and of protecting information Customs does not want disclosed to private industry. In addition, Eagle argues that Aerospace has minimal experience in the area of export controls and is not qualified for a sole-source award. Eagle contends that Aerospace has no particular competence in the areas covered by the statement of work and that there are better qualified private firms capable of doing the work at a much lower cost. Eagle also questions the specific tasks that Aerospace is being asked to perform and states that many of them are not germane to Customs' responsibilities and are already being done by other government agencies. Eagle concludes that the statement of work fails to focus on the needs and requirements of Project Exodus.

Our decisions have held that the determination of what will satisfy the government's needs is primarily within the discretion of procuring officials. We will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis. Ridg-U-Rak, Inc., B-211395, August 8, 1983, 83-2 CPD 179.

In the present case, Customs indicates that it is critical to its enforcement efforts that the technologies most desired by foreign nations be identified and that enforcement priorities among those technologies be established. Customs states that the work is not intended to duplicate or supplant other ongoing studies of critical technologies and an effort will be made to ensure that no duplication occurs. Although Eagle argues that it is more appropriate for other agencies to do this type of work, Customs, in its discretion, has determined that the requested technical support is necessary to assist Customs in performing its duties. Eagle has not shown that this determination is an unreasonable exercise of Customs' discretion and, accordingly, we have no basis to object to Customs' procurement of these services. See Cloyd Dake Gull Associates, Inc., B-188660, October 3, 1977, 77-2 CPD 253.

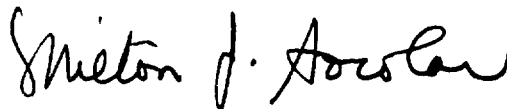
Turning to the propriety of conducting this procurement on a sole-source basis, we note that negotiated procurements must be conducted on a competitive basis to the maximum practicable extent. 10 U.S.C. § 2304(g) (1982). A contracting agency, however, can justify a sole-source award by showing that it reasonably believed at the time of award that there clearly was but one possible source of supply, or that, based on the totality of the circumstances which existed at the time of award, it would have been futile to have sought competition. Lear Siegler, Inc., B-209524, September 1, 1983, 83-2 CPD 285. While we subject sole-source awards to close scrutiny, we will not object if there is a reasonable basis for the agency's determination. Tom Shaw, Inc.; Merritt Dredging Company, B-210781; B-210781.2, August 16, 1983, 83-2 CPD 218.

Here, there are two aspects to Customs' decision to award a sole-source contract to Aerospace. First, Customs determined that only an FCRC would be able to meet the agency's needs and, secondly, that Aerospace was the only FCRC with the requisite capabilities. Customs' decision to award sole-source to an FCRC is based upon its determination that only an FCRC is qualified to provide the objective analytical competence required by Customs without any conflicts of interest and without any potential disclosure of Customs' enforcement efforts to private industry. The record reflects that Customs considered expanding in-house staff or contracting with private contractors, major universities or other government agencies before deciding that only an FCRC possessed all the attributes required. Although Eagle argues that it is capable of objective analysis and of safeguarding classified material, Eagle has not refuted the need stated by Customs as justification for the sole-source award. Based on the record, we cannot say that Customs' sole-source decision in this regard was unreasonable. Furthermore, Eagle's allegation that Aerospace improperly competed with private industry is without merit since there can be no improper competition where a sole-source award to an FCRC is fully justified.

Eagle also argues that Aerospace is not qualified to perform the required tasks. Eagle contends that it has submitted proposals to Customs to do precisely this work and could perform at a much lower cost. However, because

of our finding that a sole-source award to an FCRC was justified, we need not address these issues. We require a party to be interested in order to have its protest considered by our Office. 4 C.F.R. § 21.1(a) (1983). We have held that a party is not sufficiently interested to protest a sole-source award if that party would not be eligible to compete for the contract if the sole-source award was found improper. Interscience Systems, Inc.; Amperif Corporation, B-201943; B-202021, August 31, 1982, 82-2 CPD 187. Since we have found that a sole-source award to an FCRC was justified and since Eagle would not be eligible for an award because it is not an FCRC, we find that it is not sufficiently interested to protest the sole-source award to Aerospace on the remaining grounds of protest. N.D. Lea & Associates, Inc., B-208445, February 1, 1983, 83-1 CPD 110.

Protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States